

**Government of Montenegro**

**Ministry of Economy**

## **Questionnaire**

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

### **06 Company law**

**Minister: Branko Vujovic**

**Podgorica, December 2009**



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**CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE  
OBLIGATIONS OF MEMBERSHIP**

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## **Chapter 6: Company law**

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## **I. COMPANY LAW**

### **A. Legal Framework**

**1. What protection is provided to shareholders under your country's legislation (e.g decision-making power on fundamental issues; pre-emption rights; equal treatment of shareholders of the same class; shareholder protection measures related to mergers and divisions etc.)? Please specify.**

The Business Organization Law (Official Gazette of the Republic of Montenegro 06/02 and Official Gazette of the Republic of Montenegro 17/07 and 80/08) has regulated an entire set of property (Article 31 of the Law) and non-property rights (Article 32 of the Law) of shareholders.

Under Article 32 of the Law, shareholders have the right to attend the general meeting of shareholders and vote, unless otherwise stipulated by this Law or the charter of the company. Owners of the same class of shares have the same rights. In addition, shareholder has the right to inspect the copies of financial statements, including auditor's reports, within the period of 30 days prior to the shareholders' general meeting, as well as during the general meeting of shareholders. Furthermore, the Law prescribes that whenever the capital is increased by monetary contributions, shares must be offered to existing shareholders under the pre-emption right, in proportion to the number of shares they own (Article 53, paragraph 2 of the Law).

Special shareholders' rights are stipulated by Article 32a of the Law. Shareholders may ask the company to repurchase their shares at the average market value, which was the value of company shares on the day of the adoption of the decision at the general shareholders' meeting. The prerequisite is that the shareholder has voted against, in case when he/she was not satisfied by the distribution of company shares resulting from the division of the joint-stock company, which was performed proportionally to the ownership structure of the company being divided, and in the case when the shareholder is not satisfied by the adopted proportion of the shares exchange and monetary consideration in the process of restructuring. Moreover, a shareholder who voted against or did not attend the general shareholders' meeting at which the merger agreement was adopted, may demand the court to cancel the merger if important provisions of the process of merging were not observed, within six months from the day of publishing the contract of merger in the Official Gazette of Montenegro (Article 22a of the Law).

**2. Is there a minimum capital requirement for companies? If so, what is it? Are there safeguard clauses to protect the company's capital, e.g. rules on distributions to shareholders, on acquisition by a company of its own shares, on providing financial assistance to third parties for the acquisition of a company's shares?**

The minimum amount of capital for corporations - joint stock company and limited liability company is prescribed by the Law. Article 17 of the Law specifies the minimum initial capital of a joint stock company in the amount of EUR 25 000 in monetary terms, regardless of the fact whether the joint stock company is incorporated by simultaneous or successive incorporation (private or public joint stock company). In case of incorporating an Ltd company, it is prescribed by the Law that the capital of the company cannot be less than EUR 1 (Article 66 of the Law).

Shareholder has the following rights: the right to a share in the profit of the company in the form of a dividend when a decision upon the distribution of dividends is made, to receive the remaining part of the company assets after liquidation, to receive shares without payment from company assets in case of an increase of capital determined in the Articles of Association, priority right in acquiring new issue of shares and convertible bonds, etc (Article 31 of the Law).

Article 60 of the Law defines the legal regime of a joint stock company to acquire its own shares.

Paragraph 12 of the same Article of the Law prescribes that the company shall not grant loans, guarantees, or provide any other form of financial assistance to the person intending to buy shares of the company, except in the case of preferential sales of shares to company employees.

### **3. Are enterprises subject to particular obligations regarding the protection of creditors and if so, what are they?**

Protection of creditors is prescribed by the Business Organization Law and the Law on Business Organization Insolvency (Official Gazette of the Republic of Montenegro 06/02, 01/06, 02/07 and Official Gazette of Montenegro 62/08). All companies are liable for their obligations to the full extent of their property. Entrepreneurs, partners and general partners in a limited partnership are liable to the full extent of their property, while shareholders, members of the limited liability company and limited partners have limited liability, up to the level of their contributions. However, their liability for the obligations of the company becomes equal to the liability of an entrepreneur or a partner (to the full extent of their property) in cases when there is an abuse of the capacity of the legal entity (mixing of property, i.e. mixing the assets of the owner and the assets of the company; false or fraudulent registration; the failure to keep records as prescribed; the failure to renew registration and submit the information to the Central Registry of the Commercial Court, as well as in cases of inadequate capitalization or insurance; which do not correspond to the level of risk related to the business activities of a certain company. In case of a limited partnership, in addition to the cases mentioned in the previous sentence, direct participation of limited partners in managing or running of the limited partnership, as well as emphasizing the names of limited partners in the name of the company shall be considered a heavy violation of limited liability regulations). Special creditors' protection is provided in cases of company restructuring as well (division, merger, and change in the form of organization). Article 22 paragraph 2 of the Business Organization Law prescribes that the restructuring of a joint-stock company can be performed only when the assets of the company exceed its liabilities. It means that the protection of creditors is provided, i.e. that the creditors of a company may oppose the company restructuring decision, if they make probable that the company does not meet this requirement. In relation to the previously said, Article 22a, paragraph 11 of the Law prescribes that every company included in the merger shall inform its creditors of the matter in a written form, at least 30 days prior to holding of the general meeting of shareholders where the draft merger agreement shall be considered. In addition, paragraph 20 of the same Article defines the right of creditors to demand the court to cancel the merger if appropriate protection of claims was not provided upon their request, and the merger seriously endangers the settlement of their claims, in the period not exceeding six months from the day of publishing the merger agreement in the Official Gazette of Montenegro.

In case of the division into one or more separate companies, creditors have the right to request the court to annul the division if important provisions of the process were not complied with, and if appropriate protection of claims was not provided to creditors upon their request, and the division seriously endangers the collection of their claims, within the period of three months (Article 22 paragraph 8 of the Law). For the obligations which are not settled by the new company and which the new company has taken over under the decision of the division, the existing company and the new company shall be jointly liable, i. e. all new companies shall be jointly liable, provided that the division includes the incorporation of more than one new company, unless otherwise arranged with a certain creditor. New company and existing company are jointly liable for the obligations which are not settled by the existing company, unless otherwise arranged with a certain creditor. Joint liability of the new company is limited to the amount of the net property value transferred to that company.

In addition, Article 40 paragraph 4 item 3 of the Law prescribes that the Commercial Court shall make a decision on convening the general meeting of shareholders or an extraordinary general meeting of shareholders, if the creditors of the company demand the Commercial Court to do so,

due to the failure to convene an extraordinary general meeting of shareholders in one of the cases envisaged in paragraph 2 of this Article.

Article 47 paragraph 6 of the Law defines the obligation of the company to submit the copy of the notice to the creditors, provided that the notice on contract termination with the auditor contains a statement that the contract is terminated due to the circumstances which must be communicated to creditors, in the period of seven days since the notification on the termination of contract with the auditor is received.

In the aim of protecting the creditors, in Article 59 paragraph 3 of the Law, the legislator has prescribed that a company may not reduce its capital unless it provides additional guarantees for its obligations to each and every creditor who demands them and whose claims were in force prior to the announcement of the decision on the reduction of capital. The company is obliged to inform in writing each and every creditor on the decision on the reduction of capital. Creditors may request the satisfaction of their claims within the period of 60 days from the day of submitting such notification or from the day of publishing the notification in the Official Gazette of Montenegro, whichever is later.

Law on Business Organization Insolvency, Article 6, paragraph 6, defines that a creditor or a group of creditors may submit a petition for the initiation of bankruptcy procedure, when the following conditions are met:

- 1) The debtor has failed to satisfy on a debt due to the petitioning creditor (or creditors) that is at least 30 days overdue;
- 2) The total amount of debt overdue exceeds Euro 500 in amount for entrepreneurs and Euro 2 500 in amount for business organizations and institutions;
- 3) The debt is not contingent, nor subject to a bona fide dispute; and,
- 4) The debtor is generally not paying its debts as they become due.

In addition, paragraph 8 of this Article defines that the Petition submitted by more than one creditor may not be recalled without the consent of all creditors submitting the petition. The petition may be withdrawn only before it is accepted and solely under the condition that the debtor is not damaged by this action.

Article 28, paragraph 2 of the Law on Business Organisation Insolvency defines that creditors may form a Creditors Committee.

Adequate protection is defined by Article 38:

- 1) Where property of the estate is secured by a pledge, lien or security interest, and the creditor holding the pledge, lien or security interest is prevented from exercising its right to seize, possess or sell the property due to the operation of the moratorium, the secured creditor is entitled to adequate protection of the secured property in order maintain its condition and value as it was at the time the moratorium came into being.
- 2) Where the property subject to a security interest is not being adequately protected, the secured creditor may submit a written request to the Court seeking an order granting substitute adequate protection. Such a request may be combined with a request for suspension of the moratorium.
- 3) The Court must issue a ruling on the request for adequate protection within 20 days of its submission otherwise the moratorium shall be considered suspended by operation of law with regard to the requesting creditor and only to the extent necessary for the creditor to exercise its rights in the secured property.
- 4) The following shall be considered by the Court as substitute adequate protection:
  - I. Compensation by means of regular cash payments to the secured creditor equal to the decline in property value or compensation for actual or anticipated losses;
  - II. Exchange or the designation of additional secured property sufficient to compensate for the decline in property value or compensation for losses;
  - III. Delivery of proceeds generated from sale, use, alienation of the collateral to the corresponding secured creditor, to the extent of the secured claim of the latter;
  - IV. Repair, maintenance, insurance coverage or security guard, as needed to remedy the problem;

- V. Other protective or compensatory measures as the Court sees fit to protect the secured creditor's property value.

**4. Are companies required to publish information about major decisions affecting them? Are there other requirements for the publication of information by companies listed on the stock exchange? Are there for instance rules on contributions in kind and rules on creditor protection in the event of a reduction in the subscribed capital? Please explain.**

The disclosure obligation for business organizations is regulated by Article 14, Article 28 and Article 71 of the Business Organization Law.

**JOINT STOCK COMPANIES** publish the information, through the Central Registry of the Commercial Court, in the Official Gazette of Montenegro, related to the name and registered office of the company, names of members of the governing body, Executive Director, company secretary, auditor, and the date of entering into the Memorandum of Association, adoption of the Articles of Association, and date of registration.

Upon the initial registration of the joint stock company, the company submits the following documents and information to the Central Registry of the Commercial Court:

- 1) Memorandum of Association;
- 2) Articles of Association and a special act if the Articles of Association do not contain the information from Article 19 paragraph 3 of this Law;
- 3) list with the names of members of the Board of Directors;
- 4) names and surnames and, in the case of a change in the name/surname, previous name/surname of members of the Board of Directors, as well as the date and place of their birth;
- 5) their personal identification numbers;
- 6) permanent residence, or temporary residence of the members of the Board of Directors;
- 7) statements from the members of the board of directors concerning which citizenship they have;
- 8) professions of members of the Board of Directors;
- 9) information concerning memberships in other boards, functions they have in Montenegro or elsewhere, as well as the registration place of those companies, if they are not registered in Montenegro;
- 10) name and address of the Executive Director, company secretary and auditor;
- 11) name of the company and the location of the registered office of the company, or the address where official letters are sent;
- 12) signed statement of the members of the Board of Directors, Executive Director, company secretary and auditor stating the acceptance of the appointment;
- 13) the resolution of the Securities Commission approving the prospectus for the public offering of shares, or which confirms the success of the issue or, the resolution of the Securities Commission on recording the initial issue of shares, for a private company (simultaneously incorporated company);
- 14) evidence on the payment of the appropriate fee.

Article 28 of the Law determines that the joint stock company shall submit the following to the Central Registry of the Commercial Court, which then submits it to the Official Gazette of Montenegro to be published:

- 1) amendments related to the Articles of Association, Memorandum of Association and the prolongation of the period the company is incorporated for;
- 2) changes in the name and the registered office of the company, or the address for receiving official letters;
- 3) appointment, revocation, and information on persons authorized to represent the company in relations with third parties, as well as the information whether the persons authorized to represent the company are doing so collectively or individually;

- 4) appointment, revocation, and information concerning the Executive Director, company secretary and the company auditor;
- 5) resolution of the general meeting of shareholders regarding the liquidation of the company;
- 6) decision regarding the appointment of the liquidator, his identity, qualifications and powers, except those determined by this Law or by the Articles of Association;
- 7) financial statements, including auditor's report.

**GENERAL PARTNERSHIP** is registered by submitting the registration application for running the statistics at the Central Registry of the Commercial Court. Registration application contains the name of the general partnership, names of general partners, their addresses and personal identification numbers (CPR Nr). Partnership Agreement, if drawn, may be submitted to the Central Registry of the Commercial Court by partners.

Registration of a limited partnership is performed by submitting the statement or the agreement signed by all company members to the Central Registry of the Commercial Court, which contains the following:

- 1) name of the company and the symbol that the company was incorporated as a limited partnership;
- 2) registered office of the company;
- 3) the period that the company is being incorporated for, and the date of the commencement of business activity;
- 4) name, surname and personal identification number, or the name of each of the members of the company;
- 5) name of every person acting in the capacity of a limited partner;
- 6) contribution of a limited partner and the information whether the contribution is in monetary or non-monetary form.

**LIMITED PARTNERSHIP** is obliged to submit a signed statement to the Central Registry of the Commercial Court, within the period of seven days from the day of incurred change, stating the changes in all cases when the following is changed in a company:

- 1) name of the company;
- 2) registered office of the company;
- 3) period of the existence of the company;
- 4) a member of the company or information on members of the company;
- 5) the amount of limited partners' contribution;
- 6) the type of liability of members of the company.

Provided that a general partner becomes a limited partner in a company, this information is published in the Official Gazette of Montenegro, and the capacity of the limited partner is acquired on the day the information is published.

In cases when the share of a limited partner is transferred to a third party, such information is submitted to the Official Gazette of Montenegro to be published, and rights arising from this share are acquired on the day of publishing the announcement.

Any person is allowed to inspect the information concerning the limited partnership submitted to the Central Registry of the Commercial Court, in accordance with this Law.

**LIMITED LIABILITY COMPANY** shall submit the following information and documents to the Central Registry of the Commercial Court, which are published upon the first registration of the company:

- 1) Articles of Incorporation;
- 2) Articles of Association;
- 3) list of founders, members of the company, managers and members of the Board of Directors, if appointed, including:
  - a) names, surnames, and in cases of change in name/surname, the previous name/surname;
  - b) date and place of birth of members of the Board of Directors, personal identification number or passport number, if they are foreign nationals;
  - c) permanent or temporary residence of members of the Board of Directors;

- d) statements of members of the Board of Directors regarding which citizenship they have;
- e) information concerning memberships in other companies, boards or other functions they perform in Montenegro or elsewhere, as well as the place of registration of those companies, if that they are not registered in Montenegro;
- 4) name of the Executive Director;
- 5) name of the company, address of the registered office and address for receiving official letters, if different;
- 6) persons authorized to represent the company and information whether the representation is collective or individual;
- 7) written consent of the members of the Board of Directors regarding their appointment, if appointed.

In the Official Gazette of Montenegro, Central Registry of the Commercial Court publishes information on the name and registered office of the company, name of the Executive Director, names of members of the Board of Directors, if they are appointed, date of the adoption of the Memorandum of Association and Articles of Association, as well as the date of the registration.

The publication of documents in the Official Gazette of Montenegro is performed by stating the titles of documents.

Limited liability company is obliged to submit following documents and information to the Central Registry of the Commercial Court, which are published in the Official Gazette of Montenegro:

- 1) amendments to the Articles of Association or Articles of Incorporation, including the prolongation of period determined for the existence of the company;
- 2) change in the name and registered office, as well as the addresses for receiving official letters;
- 3) appointment, revocation, and information on persons elected to be members of the Board of Directors, for members of administration or other authorized persons, if such exist. It must be published whether persons authorized to represent the company may do so individually or collectively;
- 4) appointment, revocation, and information on persons which, collectively or individually, have the authorization to represent the company in relations with third parties. It must be published whether the persons authorized to represent the company may do so collectively or individually;
- 5) liquidation of the company;
- 6) annulment of the incorporation of the company by the Commercial Court;
- 7) appointment of the liquidator, his identity, qualifications and powers which are not listed in this Law and Articles of Incorporation;
- 8) the amount of capital, provided that the increase in capital does not require the change of the Articles of Association.

The company shall submit annual financial statements to the Central Registry of the Commercial Court. Disclosure of the existing amount of capital is mandatory, unless stated in financial statements.

#### **5. Do any particular regulations depend on the size of an enterprise? If so, what are they?**

The Business Organization Law (Official Gazette of the Republic of Montenegro 06/02 and Official Gazette of Montenegro 17/07 and 80/08) only limits a limited liability company to the maximum of thirty members (Article 65 of the Law), while the number of shareholders in a joint stock company is not limited.

The official definition for the size of an enterprise in Montenegro is stipulated by the Law on Amendments to the Law on Accounting and Auditing (Official Gazette of Montenegro 80/08).

**6. To what extent is your legislation inconsistent with the First and Second Company Law Directives?**

The Business Organization Law is consistent with the First Directive (inconsistency refers to the Amendments to the First Directive) to a large extent, while the same Law is consistent with the Second Directive and the Amendments to the Second Directive. The new Business Organization Law is planned to be adopted in 2010, so that harmonization with all the directives of the EU in the area of corporate governance is planned.

**7. Do you already have, or are you planning to introduce, legislation to align with the Third, Sixth, Eleventh and Twelfth Company Law Directives, the Take-over Bids Directive, Directive on the cross-border mergers of limited liability companies and the Shareholders' Rights Directive?**

The Business Organization Law is aligned with the Third and Sixth Directive (inconsistency refers to the Amendments to the Third and Sixth Directive) to a large extent, while this Law is aligned with the Eleventh and Twelfth Directive of corporate governance. Alignment of the Law with all the directives is planned by the end of 2010. The given Decree and Statute shall be directly implemented on the day of Montenegro entering the EU.

**8. Do you have, or are you planning to introduce, a Corporate Governance code? To what it is based on (e.g. OECD standards)? How binding is the compliance with the code (e.g. voluntary; comply or explain) and how is the compliance monitored?**

The Corporate Governance code is not regulated by law in Montenegro. Some companies have a certain form of corporate governance, but unfortunately corporate culture and corporate governance are not developed in the full sense. Alignment with all the directives of the EU in the area of corporate governance is planned by the new Business Organization Law.

**B. Administrative Capacity**

**9. What types of companies are recognised by your law? What is the total number of enterprises in each category?**

Under the Business Organization Law (Official Gazette of the Republic of Montenegro 6/02 and Official Gazette of Montenegro 17/07 and 80/08) commercial activity is performed by entrepreneurs (Entrepreneur is a natural person dealing with commercial activity with the purpose of generating profit) and following forms of performing commercial activities:

- general partnership,
- limited partnership,
- joint stock company ,
- limited liability company and
- foreign company branches.

In addition, other legal entities incorporated in accordance with other laws (Law on Non-Governmental Organizations, Law on Public Institutions, Law on Cooperative Associations) are registered in the Central Registry for companies in the Commercial Court of Podgorica, and those are:

- non-governmental organizations,
- institutions,
- cooperatives and
- funds (organized as joint stock companies)

TOTAL NUMBER OF ACTIVE REGISTERED ENTITIES ACCORDING TO THEIR FORMS	
Joint stock companies	376
Limited liability companies	22.108
Foreign company branches	401
Funds	8
Limited partnerships	64
Non-governmental organizations	283
General partnerships	472
Entrepreneurs	16.689
Institutions	988
Cooperative associations	104

Source: Central Register of the Commercial Court

**10. Is there a central register for companies? If not, are there any plans in this respect? If yes, how does the register hold the company information (in electronic form, on paper, etc.). Please provide details about the information held by the register, e.g. company name and objects, financial details, identity of those running the company, authorised representatives, major decisions affecting the company, etc.**

Central Registry of commercial entities is an independent state body established as a part of the Commercial Court in Podgorica and it performs the registration of business organizations in Montenegro. The information is being stored in both electronic and hard copy form.

The type of information being registered and stored for various forms of organizations are prescribed by the Business Organization Law (Official Gazette of the Republic of Montenegro 6/02 and the Official Gazette of Montenegro 17/07 and 80/08) and by Instruction on the work of the Central Registry and registration forms (Official Gazette of Montenegro 43/08), and it refers to the following information:

- form of the organization,
- full name,
- abbreviation,
- period that the company is established for;
- registration number,
- date of the adoption (amendments to) the Articles of Association of the company,
- date of the adoption (entering into) of the Memorandum of Association, and the date of its amendments,
- registered office and address for receiving official mail,
- number and date of the confirmation on the reserved name, if the reservation was performed,
- whether the statement is submitted through representatives or attorneys in fact,

- information on the applicant (name and surname, personal identification number or the passport number for foreign nationals),
- main activity,
- the total of the initial capital, monetary and non-monetary,
- number and date of the Securities Commission decision approving the issue of shares as well as the decision confirming the success of the issue of shares;
- information on founders (name and surname or the title, personal identification number or CPR Nr., address or the registered office and the share in a company)
- information on director (name and surname, personal identification number or passport number for foreign nationals, address, limited or unlimited authorizations in transactions, authorized to act individually or collectively),
- information on the collective managing body (for each member: name and surname, personal identification number or passport number for foreign nationals, address, limited or unlimited authorizations in transactions, authorized to act individually or collectively, membership in other boards and positions in other companies), information on company secretary if the company has one (name and surname, personal identification number or passport number for foreign nationals, address, limited or unlimited authorization in transactions, authorized to act individually or collectively),
- information on auditor if the company has one (name and surname, personal identification number, address or registered office),
- information on other representatives (name and surname, function, personal identification number or passport number for foreign nationals, address, limited or unlimited authorizations in transactions, authorized to act individually or collectively),
- information on company branches – business units (name, registered office, main activity and information on representative),
- for a foreign company branch - information on the parent company (name, form, registered office and registration number, alternative name of the company branch),
- information on managing bodies in parent company and the person authorized to represent the company branch,
- information on submitted financial statements and information concerning the applicant of the registration statement (name and surname, personal identification number and address).

**11. Are there any fees that are charged for issuing certain documents (certificates, copies, transcripts, attestations, notifications) contained in the company register? If yes, are these fees limited to cover the administrative costs incurred in issuing such documents or are they set in a different way? What is the procedure for issuing these documents?**

The following fees are charged by the Central Registry for companies:

	EUR
for the registration of a joint stock company	50.00
for the registration of other forms of companies	10.00
for the registration of the Notice of Continuance	1.00
for the issuance of an authenticated copy of the Registration Certificate or a Certificate of Non-Existence in the Central Registry of the Commercial Court, or for any other document	5.00

Fees are prescribed by Article 87 of the Business Organization Law (Official Gazette of the Republic of Montenegro 6/02 and Official Gazette of Montenegro 17/07 and 80/08).

Procedure for issuing the documents is rather simple, the applicant files the application with the proof of payment of the registration fee and in a very short period (depending on the work load of

the Registry), usually several days, the applicant can take the documents in the premises of the Central Registry of the Commercial Court.

**12. How is information on companies published? Is there a national gazette?**

Information on companies are published in the Official Gazette of Montenegro, in the first following number to be issued (the most important information with the instruction that the rest of the information is held at the Central Registry of the Commercial Court) as well as on the website of the Central Registry of the Commercial Court which is updated on a daily basis. ([www.crps.cg.yu](http://www.crps.cg.yu))

**13. How can the public get access to the company information register, e.g. in person, by mail, by electronic means, etc.? Is everyone entitled to consult the register without having to prove a legitimate interest in the enquiry? Is there a fee for consultation?**

All the information held at the Central Registry of the Commercial Court is available to the public via website of the Central Registry, which is updated on the daily basis. Any person, without having to prove legal interest, has the right and possibility to obtain any information held at the Central Registry of companies. If a client wishes to perform a direct inspection of the documents which are in hard-copy form at the Central Registry, he/she can access the information by filing a written request and paying a fee in the amount of five euros.

**14. What is the average time-scale between application for registration and effective registration of a company? What is the number of companies registered at this moment and in the last two years?**

Deadline prescribed by law for the registration or rejection of the statement is four days (Article 86 of the Business Organization Law (Official Gazette of the Republic of Montenegro 6/02 and Official Gazette of Montenegro 17/07 and 80/08)).

The average period of time between the submission of the registration statement (application) and the issuance of the Registration Certificate is two days.

Number of currently registered commercial entities (along with 16 689 registered entrepreneurs) is 41 493.

The number of registered commercial entities within the last two years (along with 1 783 of registered entrepreneurs) is 6 697.

Commercial entities erased on different grounds are not included in these numbers.

**15. Are there any penalties or fines imposed on companies if annual accounts are not deposited at the company register? If so, what is the amount of such fines? What is the percentage of public and private limited liability companies that do comply with the requirement to file their annual accounts with the company register?**

Under the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08), a legal entity referred to in Article 8 paragraphs 1 and 2 of this Law, which does not submit financial statements and consolidated financial statements in electronic form and on paper to the Central Registry of companies within the time limit prescribed by Article 7 paragraph 2 shall be punished by a pecuniary fine in the amount of twenty fold to three

hundred fold of the amount of minimum wage in Montenegro. A pecuniary fine in the amount of ten fold to twenty fold of the amount of the minimum wage in Montenegro shall be also imposed on a responsible person in the legal entity.

Provided that a legal entity submits unsigned financial statements to the Central Registry of the Commercial Court or the Securities Commission, a pecuniary fine in the amount of ten fold to three hundred fold of the minimum wage in Montenegro shall be imposed on that legal entity.

A pecuniary fine in the amount of ten fold to twenty fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a responsible person in the legal entity.

The percentage of limited liability companies which have submitted their financial statements, to the Central Registry of the Commercial Court in 2008, within a time limit prescribed by law and in the appropriate manner, is 68%, while the percentage is lower in this year and it amounts to 62%.

**16. Please identify the administrative or judicial authority responsible for the incorporation of companies.**

The Central Registry of the Commercial Court is a part of the Commercial Court in Podgorica and only this entity has the authority to perform the registration of commercial entities in Montenegro.

**17. Is there a mechanism in place that allows coordination and cooperation with registers from other Member States (e.g. in the context of a cross-border merger of companies)? Please explain.**

A mechanism which would allow coordination and cooperation with registers from other Member States does not exist for the moment.

## **II. CORPORATE ACCOUNTING AND AUDIT**

### **A. Accounting**

#### **18. What legal instruments do you have in the accounting field? Are there any official instructions or recommendations by a standard-setting body?**

The Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) regulates the area of accounting, while by-laws further regulate individual areas of their implementation.

The following by-laws are adopted:

- Rulebook on statistical annex content (Official Gazette of Montenegro 17/09)
- Rulebook on the manner of keeping and forms of registries of audit firms and authorized auditors (Official Gazette of Montenegro 30/09)
- Decision on establishing the Accounting and Auditing Council (Official Gazette of Montenegro 32/09)
- Rulebook on detailed conditions and documentation for obtaining the licence of an authorized auditor (Official Gazette of Montenegro 33/09)
- Rulebook on manner and deadlines for the implementation of regulations and harmonizing bookkeeping balance with the actual balance (Official Gazette of Montenegro 34/09)
- Rulebook on amendments to the rulebook on detailed conditions and documentation for obtaining the licence of an authorized auditor (Official Gazette of Montenegro 41/09)
- Rulebook on documentation for acquiring the title of a certified accountant (Official Gazette of Montenegro 48/09)
- Instruction on the manner of determining the meeting of requirements for the issuance of working licence to an audit firm (Official Gazette of Montenegro 48/09)
- Rulebook on the amount of insurance for mandatory liability insurance of audit firms and authorized auditors for damage they could cause to the entity for which the audit is being performed (Official Gazette of Montenegro 60/09)

The Accounting and Auditing Council is a body which is formed by the Government of Montenegro, under the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08). The Council considers and takes positions concerning matters such as: development and promotion of accounting and auditing practice in Montenegro; providing advice to policy makers, regulators and government bodies; providing technical assistance for improving the quality of financial reporting and other matters important for the realization and promotion of accounting and auditing practice in Montenegro.

#### **19. Which enterprises fall within the scope of the general regulations? Are there special regulations for limited liability companies? Are there exceptions for small and medium sized companies?**

General regulations are applied to legal entities registered for performing commercial activity and foreign company branches registered on the territory of Montenegro, regardless of the structure of capital or ownership (hereinafter referred to as: legal entities).

Limited liability companies are not specially exempt as such, but solely in the part of mandatory audit, the obligation of submitting quarterly financial statements and in the part concerning classification, which under the Law on Accounting and Auditing is performed in accordance with

the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124 of 20 May 2003).

Small and medium-sized enterprises are exempt from the requirement concerning audit, disclosure of financial statements and submitting mandatory set of forms (small enterprises are obliged to submit the balance sheet, income statement and statistic annex to the Central Registry of the Commercial Court).

**20. Are consolidated accounts (the accounts of groups of companies) as well as the accounts of individual companies regulated? If so, are there exceptions for any groups of enterprises (e.g. size thresholds, legal forms) from the requirement to draw up consolidated accounts?**

Yes, consolidated accounts (the accounts of groups of companies) as well as the accounts of individual companies are specifically regulated by the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) by the following provisions:

- 1) Legal entities having control (parent legal companies) over one or more legal entities (subsidiaries) are obliged to compile, submit and disclose consolidated financial statements, in accordance with IAS.
- 2) Consolidated financial statements are statements of the economic unit which consists of a parent legal entity and all subsidiaries.
- 3) Large legal entity, medium legal entity and parent legal entity which is obliged to compile consolidated financial statements, legal entity issuing securities and other financial instruments traded in the organized market, is obliged to submit financial statements and consolidated financial statements to the Central Registry of the Commercial Court, in accordance with ISA/IFRS.
- 4) Joint stock company and other legal entity issuing securities and other financial statements for trading in the organized market, as well as the parent legal entity which is obliged to compile consolidated financial statements, shall create and submit annual and quarterly financial statements in electronic and hard copy form to the Securities Commission.

**21. What sanctions exist for not complying with financial reporting requirements?**

Sanctions for not complying with financial reporting requirements are contained in penalty provisions of the following laws:

- Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08)
- Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08)
- Business Organization Law (Official Gazette of the Republic of Montenegro 06/02 and Official Gazette of Montenegro 17/07, 80/08)

The following represents the list of penalty provisions:

**Extract from the Law on Accounting and Auditing**

**Article 19a**

A pecuniary fine in the amount of twenty fold to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal person that fails to prepare financial statements in accordance with ISA or IFRS (Article 3 paragraph 1).

#### **Article 19b**

- (1) A pecuniary fine in the amount of twenty fold to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal person that fails to compile, submit and disclose consolidated financial statements in accordance with ISA (Article 3b paragraph 1).
- (2) A pecuniary fine in the amount of ten fold to twenty fold of the amount of the minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal entity.

#### **Article 19c**

- (1) A pecuniary fine in the amount of twenty fold to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal person referred to in Article 6a paragraphs 1 and 2 of this Law, that fails to submit financial statements and consolidated financial statements in electronic and hard-copy form to the Central Registry of the Commercial Court, within a time limit prescribed by Article 6 paragraph 2 of this Law.
- (2) A pecuniary fine in the amount of ten fold to twenty fold of the amount of the minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal entity.

#### **Article 19d**

- (1) A pecuniary fine in the amount of twenty fold to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal person referred to in Article 6b paragraph 1 of this Law, that fails to submit annual and quarterly financial statements, in electronic and hard-copy form to the Securities Commission within a time limit prescribed by Article 6 paragraph 2 of this Law.
- (2) A pecuniary fine in the amount of ten fold to twenty fold of the amount of the minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal entity.

#### **Article 19e**

- (1) A pecuniary fine in the amount of twenty fold to two hundred fold of the amount of the minimum wage in Montenegro shall be also imposed for the offence on a legal person that, along with financial statements, fails to submit a statistical annex (Article 6 paragraph 3).
- (2) A pecuniary fine in the amount of ten fold to twenty fold of the amount of the minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal entity.

#### **Article 19f**

- (1) A pecuniary fine in the amount of ten fold to three hundred fold of the amount of the minimum wage in Montenegro shall be also imposed for the offence on a legal person that submits unsigned financial statements to the Central Registry of the Commercial Court or to the Securities Commission (Article 8).
- (2) A pecuniary fine in the amount of ten fold to twenty fold of the amount of the minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal entity.

### **Extract from the Criminal Code**

#### **False Balance**

#### **Article 278**

Anyone who, with the intention of obtaining some benefit for him/herself or for another or to inflict some harm to another, compiles in a company or another economic entity a false balance determining the profit or loss of that entity or determining the share of each member of a company in the profit or loss, shall be liable to an imprisonment sentence of three months to five years.

**Extract from the Business Organization Law**

**Article 92**

- (1) An enterprise or other business shall be fined of an amount not exceeding EUR 15 000 for the offences listed in paragraph 3 of this Article.
- (2) Any person within an enterprise or business who is responsible for any of the offences listed in paragraph 3 of this Article, shall also be fined in an amount not exceeding EUR 1000.
- (3) An enterprise or other business commits an offence in the following circumstances:
  - 3.1) If it fails to create a report on relations with the parent company and companies in which its parent company has the status of a parent company or subsidiary (Article 35 paragraph 3).

**22. What reforms of the legal instruments in the accounting area are planned, what is their content and when are they programmed for adoption?**

The Law on Amendments to the Law on Accounting and Auditing was adopted at the end of December of 2008 (Official Gazette of Montenegro 80/08). The previous Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05) has undergone a great number of amendments, which, among other things, refer to electronic reporting, submitting quarterly reports, consolidated financial reports, changes in the deadline for submitting financial reports, introduction of inspection supervision, classification of legal entities, establishment of Accounting and Auditing Council.

The Government of Montenegro adopted the Strategy and the Action Plan for the Improvement of Financial Reporting in Montenegro<sup>1</sup>, on 30 October 2008. This document represents a clear and systematic set of measures for the improvement of the legal framework, institutions and accounting profession, particularly in the area concerning accounting, auditing and business culture, and with the aim of achieving high quality of financial reporting.

Also, the Strategy is aimed towards recognizing and defining activities and instruments which will lead to the harmonization of regulatory framework of financial reporting with the *Acquis Communautaire*, including the preparation of consolidated financial statements, regulations of audit firms and electronic disclosure of financial statements, as well as towards defining proportional requests for financial reporting of small and medium-sized enterprises. Strategy represents a three-year plan (2009-2011) for the implementation of measures, which are prescribed by the Strategy.

The new Law on Accounting and Auditing, which will be completely aligned with the directives of the EU, shall be adopted in 2012.

**23. Are the Fourth (78/660) and/or the Seventh Directives (83/349) taken into account in these reforms?**

Yes, all relevant Directives of the EU (IV, VII, VIII) concerning accounting and auditing are taken into account. The accounting system of Montenegro has started the harmonization with the EU Directives (IV and V) in 2002, by adopting the forms of financial reporting and manner of reporting defined by the above mentioned Directives, and by introducing positions required by the Directives into official balance schemes. Amendment and alignment of balance-sheet positions was performed in 2006, and the latest change in balance schemes in accordance with the Directives and implementation of ISA/IFRS and their amendments created in the period so far, is currently ongoing, and their adoption is envisaged by the end of 2009.

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<sup>1</sup> Strategy and the Action Plan for the Improvement of Financial Reporting in Montenegro can be found at the Ministry of Finance web site ([www.mf.gov.me](http://www.mf.gov.me))

**24. Have international standards or practices had an impact?**

Yes, they have. The Law on Accounting and Auditing from 2002 (Official Gazette of the Republic of Montenegro 06/02) specifies that ISA/IFRS, IAS and IFAC Code of Ethics for Professional Accountants are to be implemented.

Balance schemes under the standards are being implemented since 2002, and national accounting is adjusted to the requirements of international standards.

Special attention is devoted to the implementation of International Auditing and Assurance Standards, and to the control of the quality of work of authorized auditors and auditing firms regarding the implementation of relevant IAS/IFRS standards and the implementation of audit procedures and principles and the methods of work. Their implementation has resulted in the uniformity of the manner of reporting, comparison with financial statements from previous periods, as well as in the adoption of reliable and important information for financial statements users.

The Law on Amendments to the Law on Accounting and Auditing (Official Gazette of Montenegro 80/08) envisages disclosure of annual financial statements and auditor's statements, on the website of the Central Registry of the Commercial Court and on the website of the Securities Commission, then, disclosure of quarterly financial statements (for joint stock companies and other legal entities issuing securities and other financial instruments which are traded in at the organized market, as well as the parent legal entity obliged to compile consolidated financial statements) on the website of the Securities Commission.

In addition, the Law introduces the obligation that large legal entities are obliged to have an Auditing Committee and an Internal Auditor, by the 1 January 2012.

**25. Are the Council Directives 86/635/EEC (bank accounts) and 91/674/EEC (insurance accounts) taken into account in these reforms?**

Yes, they are, as well as all the relevant directives, referring to these companies, as specified by the following laws: Law on Banks, Law on Insurance, Law on Securities, Business Organization Law and Law on Accounting and Auditing.

In addition, reforms of the financial reporting forms have completely incorporated Council Directives 86/635/EEC (bank accounts) and 91/674/EEC (insurance accounts).

**26. Is the IAS (International Accounting Standards) Regulation 1606/2002 taken into account in these reforms?**

Yes, the International Accounting Standards Regulation is taken into account.

## B. Statutory auditors

**27. If auditors exist, what authority is issuing them certificates and is responsible for their supervision? How many such certificates have been issued and how many of these were issued in 2008 (or the most recent year for which reliable data is available; please specify which year)?**

Auditors exist in Montenegro. Under the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08), the Ministry of Finance is issuing licenses to authorized auditors for performing the audit. The Ministry of Finance has, so far, issued 61 licences to authorized auditors, and during 2008, 10 licences of authorized auditors were issued.

Also, under the Law on Accounting and Auditing, the Ministry of Finance is issuing operating licences to audit firms. Since the Law on Amendments to the Law on Accounting and Auditing (Official Gazette of Montenegro 80/08) came into force on 3 January 2009, the Ministry has, so far, issued 16 operating licences to audit firms.

Instruction on the manner of determining the meeting of requirements for the issuance of operating licence to an audit firm (Official Gazette of Montenegro 48/09) stipulates in more details the manner of determining the requirements<sup>2</sup> for issuing operating certificates to audit firms.

**28. What requirements must be fulfilled to work as an auditor (training, experience, ethical rules)? What provision has been made for the necessary training? How many individuals underwent training in 2008 (or the most recent year for which reliable data is available; please specify which year)?**

Authorized auditors and audit firms, may perform audit on the territory of Montenegro provided that they meet the requirements prescribed by the Law on Accounting and Auditing.

Article 14 paragraph 1 of the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) prescribes that the "Licence to perform the audit may be issued to a person who meets the following requirements:

- has the title of a certified accountant;
- has been engaged in activities of auditing legal persons for a minimum of three years, under the supervision of an authorized auditor, under the contract of employment;
- has not been convicted of a crime that makes the person unworthy to perform the activities in the area of accounting and auditing."

More detailed requirements and documentation submitted for acquiring the license for performing the audit are regulated by Article 2 of the Rulebook on more detailed conditions and documentation for obtaining the licence of an authorized auditor (Official Gazette of Montenegro 33/09). Article 2 of the Rulebook stipulates that "In addition to the application for issuing the licence of an authorized auditor, the following documents are to be submitted as well:

- evidence concerning completed tertiary education;
- evidence on holding the title of a certified accountant;
- evidence on the recognition of a degree or other document acquired overseas;
- evidence that the person has not been convicted and that there are no ongoing proceedings against him/her for a crime which would make him/her unworthy to perform the activities in the area of accounting and auditing;

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<sup>2</sup> Criteria are in accordance with the VIII Directive

- evidence of the minimum of three years of experience under the supervision of an authorized auditor in activities of auditing legal persons, under the employment contract.

Documentation shall be submitted in their original form as well as a certified copy.”

Auditor may be a foreign national as well, provided that he/she validates the document proving that he/she has the title of an authorized auditor.

Regarding training, experience and ethical rules for auditors, they mainly follow the IFAC Code of Ethics for Professional Accountants and IFAC International Education Standard for professional accountants (IES) 7. Auditors are obliged to, among other things, have the experience of 120 hours in three years.

Program for taking the examination and acquiring the certificate of a bookkeeper, authorized and certified accountant, under the Educational Accounting Standard of Montenegro (Official Gazette of the Republic of Montenegro 58/07) is performed by an institution whose authorities (Institute of Certified Accountants of Montenegro) have been delegated by a competent body (Ministry of Finance). In the course of 2007, 143 persons have obtained the title of a certified accountant, 8 persons have obtained the title of an authorized accountant and 70 persons have acquired the title of a bookkeeper. New training for obtaining the titles has started in June of this year. The existing program, which is accepted nationally, is based on the ACCA program, with the use of the authorized translation of the ACCA literature on the mother tongue.

## **29. What sanctions exist in cases where statutory audit is carried out by an unauthorised person?**

The Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) envisages the following pecuniary fines:

- A pecuniary fine in the amount of twenty fold to two hundred fold of the amount of minimum wage<sup>3</sup> in Montenegro shall be imposed for an offence on a legal person referred to in Article 14 paragraph 1 that adopts audit report signed by an auditor not licensed by the competent body.
- A pecuniary fine in the amount of six fold to twenty fold of the amount of minimum wage in Montenegro shall also be imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal person referred to in Article 14 paragraph 1 of this Law.
- A pecuniary fine in the amount of twenty fold to two hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on an audit firm that performs auditing activities but does not meet the requirements prescribed by Articles 15, 17 and 18 of this Law.
- A pecuniary fine in the amount of six fold to twenty fold of the amount of minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the audit firm.
- A pecuniary fine in the amount of twenty fold to two hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence of an audit firm if it fails to perform audit in accordance with this Law, IAS and ISA, IFRS and Code of Ethics.
- A pecuniary fine in the amount of ten fold to twenty fold of the amount of minimum wage in Montenegro shall be imposed on an auditor that fails to perform audit in accordance with this Law, IAS and ISA, IFRS and Code of Ethics.
- A pecuniary fine in the amount of ten fold to twenty fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a natural person who performs auditing activities but does not meet the requirements prescribed by Articles 15 and 16 of this Law.

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<sup>3</sup> Minimum wage is 55 euros.

- A pecuniary fine in the amount of twenty fold to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal person which did not obtain operating licence form a competent body, and has words "audit firm" in its name.
- A pecuniary fine in the amount of ten fold to twenty fold of the amount of minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal person.

**30. Have the qualification requirements been amended lately or are changes planned? Have the provisions of the Eighth Directive (84/253) been taken into account?**

Required qualification which is changed in the latest amendments to the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) concerns the requirement of practical working experience for obtaining the title of an auditor, where instead of two years of experience under the supervision of an auditor, a provision is introduced which requires that, as a certified accountant, the person has performed auditing activities in the minimum of three years, under the supervision of an authorized auditor.

Also, a requirement for the registration of an audit firm is changed, where instead of one required employed auditor, now the existence of at least two founders who have to be authorized auditors is required, as well as the possession of at least two thirds of votes in managing the audit firm.

Provisions of the Eight Directive (84/253) are completely implemented when meeting the necessary requirements for obtaining the title of an auditor is concerned.

**31. Do statutory audits in your country comply with the principles and requirements set out in the Commission Recommendations of 16 May 2002 (Statutory Auditors' Independence in the EU: A Set of Fundamental Principles, OJ L 191 of 19.7.2002) and of 15 November 2000 (quality assurance for the statutory audit in the European Union: minimum requirements, OJ L 91 of 31.3.2001)?**

Independence regarding the status and the form of organizing Audit firms and authorized auditors in the capacity of entrepreneurs is being respected. In addition, absolute independence and quality of audit are required to be achieved through the necessity of implementing all IAS/IFRS standards and IFAC Code of Ethics, which proclaim the mandatory principle of statutory auditors' independence.

Rulebook on the amount of insurance for mandatory liability insurance of audit firms and authorized auditors for damage they could cause to the entity for which the audit is being performed is published in the Official Gazette of Montenegro 60/09 of 8 September 2009. Rulebook prescribes the amount of insurance for damage an audit firm or an authorized auditor could cause by performing auditing services and it amounts to EUR 50 000.00, except the amount of insurance of large legal persons, banks, pension and investment funds and insurance companies which amounts to EUR 150 000.00.

**32. If yes, are such principles and requirements part of your audit legislation or do you have any plans to give such principles and requirements a legally binding status, in line with the Communication adopted by the Commission on 21 May 2003 (COM(2003)286)?**

Yes, a constituent part of our legislation is the implementation of Principles and Doctrines, which are stipulated by IAS/IFRS, IFAC Code of Ethics and EU Directives.

The Law on Accounting and Auditing has, in the last amendments from December 2008, almost completely harmonized the area of audit profession and organizing audit review with the guidelines, principles and recommendations required by the Eight EU Directive.